IN THE HIGH COURT OF JUDICATUTRE AT BOMBAY,

NAGPUR BENCH NAGPUR.

WRIT PETITION NO.1117 OF 1996.

PETITIONER: Dr.Premlal Gadiram Pande,
aged about 57 yeasrs, r/o Opposite Kelkar Mangal Karyalaya,Marar Toli, Ramnagar,Nagpur.

: **VERSUS** :

RESPONDENTS: 1. State of Maharashtra through its Secretary, Ministry of Education, Mantralaya, Bombay-32.

2. Joint Director of Higher Education, Nagpur Division, Nagpur.

3. Principal/Hon.Director, Janta College of Education, Chandrapur run by Chanda Shikshan Prasarak Mandal, Chandrapur.

4. Secretary, Chanda Shikshan Prasarak Mandal, Chandrapur.

=-=-=-

=-=-=-

done his M.A. in Hindi and Ph.D. in the subject of Education and during the academic session 1979-80, 1980-81 and 1982-1983 he has worked as Lecturer in Education in the University College of Education, Nagpur and thereafter he left service and came to be appointed as Co-ordinator in the Institution run by respondent no.3.

4. The Petitioner claims that he ought to have been brought in the regular cadre of Lecturer, as after his appointment as Co-ordinator in the year 1990 he was asked to teach B.Ed. Classes in the subject of Hindi Methods and first paper. Not only this, earlier to joining University College of Education the petitioner has served as Assistant Teacher since the year 1960 and, therefore, he was eligible to be appointed not only as a Co-ordinator but also as a Lecturer.

5. The petitioner further claims that as per Government Resolution, the pay scale of U.G.C. were

made applicable even to the Co-ordinator in non-government Colleges of Education and on 1-9-1979 specific directives were issued by the Director of Education for non-government Colleges in regard to pay scale. Therefore, under the Government Resolution, the staff working under the extension of service centre was entitled to terminal and pensionery benefits to which the Lecturers are entitled.

6. The petitioner further claims that he having completed his tenure as Co-ordinator was entitled to be absorbed as a Lecturer in terms of the Government Resolution but due to internal dispute in the management he was not allowed to work from July, 1990 to September, 1992 and it is only after the inter se dispute in the management was resolved, his services were regularised on which the petitioner represented to respondent no.2 to grant proper pay scale and benefit of absorption as a Lecture on permanent basis. It is submitted that the Director of

Education did not accept contention of petitioner and his representations were turned down and as on 31-3-1996 the petitioner received the impugned communication from respondent no.3 by which it was informed that he stands retired w.e.f. 2-7-1996 i.e. on attaining the age of 58 years. He seeks orders/directions from this court to quash and set aside the said communication and hold that the petitioner is entitled to be considered on par with the cadre of Lecturer and his age of superannuation should be declared as 60 years.

7. Respondent no.2, who is Joint Director of Higher Education, in their return has challenged the claim of the petitioner on the ground that the Government Resolution on which the petitioner is placing reliance does not provide for any benefit which the petitioner is seeking therefrom and that the Government Resolution only clarifies the entitlement of persons in the cadre of Co-ordinator being given

benefit of U.G.C. pay scale. It is contended that the petitioner is trying to mis-interpret the Government Resolution to his advantages, though his initial recruitment is not in the of cadre of Lecturer in non-government College of Education concerned and, therefore, the said Government Resolution does not confer any benefits to the petitioner and he stood retired on attaining the age of 58 years, which is the age of superannuation applicable to the cadre of Co-ordinator. Therefore, petition deserves to be dismissed.

8. The petitioner had given illustration of one Shri P.G.Thakre, who was working in University College of Eduction, Nagpur having been absorbed by the University as Lecturer and given the benefit of pay-scale etc. as per Government Resolution dated 10th July, 1979 to which the State has replied that the said absorption of Shri Thakre as a Lecturer is not in accordance with the Government Resolution and that

the matter is being examined at the level of the Government. The petitioner has further relied in the case of one Shri Chawre, who had preferred Writ Petition No.2322 of 1991 in this court and succeeded in getting the reliefs, which are claimed by the petitioner. It is contended by the respondent that in respect of Mr.Chawre he was initially appointed to the post of Lecturer and he was permitted to be transferred to the post of Co-ordinator and the Government Resolution on which the petitioner is relying clearly covers such cases and as Shri Chawre was Lecturer prior to his transfer as Co-ordinator in Swavilambi College of Education, he was given benefit of the aforesaid order and such is not the case of the petitioner.

9. Mr.Patil, the learned counsel appearing for respondent no.4, supports respondent no.2 in the matter and submitted that the reliefs sought for by the petitioner cannot be granted.

10. A short question for our consideration is whether the petitioner is qualified to be absorbed in the cadre of Lecturer and entitled to continue till the age of 60 years as per Government Resolution dated 26-03-1979 which is annexed to the petition as ***Annexure V***. The said Government resolution refers to implementation of the scheme of revision of pay-scales for method Masters/Tutors in their colleges of education in Maharashtra State. The relevant portion of the said Government resolution which specifies as to the categories of such persons to whom the Government Resolution is application reads as under:-

> "The consideration on account of which the aforesaid category was excluded from the scope of the said scheme and whether they would agree to include this category in the "package scheme" (1973) of revision of pay-scales for University/College teachers was, therefore, under correspondence with the

Government of India for sometime past. The Government of India have now informed that they will have no objection if the State Government sanctions with effect from 1st January,1973, the revised scale of Rs. 500-20-700-25-900 to the existing incumbents of the posts of Method Masters/Tutors in the Colleges of Education and that the additional expenditure on account of the revision of their pay scales will qualify for central assistance at 80%, for the period from 1st January, 1973 to 31st March, 1979 on approved terms. In view of the above clarification now given by the Government of India, the State Government has decided to assist the Management of Non-government Colleges of Education in the State in the implementation of the scheme of revision of pay-scales for method Masters/Tutors in their Colleges in the following manner and subject to the terms and

conditions mentioned hereinafter:-

I. .....

II. .....

III.....

IV.....

V.....

VI.....

VII. Other conditions.

1.....

2. Universities should be requested to initiate action to frame suitable statutes under the relevant provisions of the respective Universities' Act of 1974 with a view to these Method Masters/Tutors, after keeping in view the provisions contained in this Government Resolution.

3. It has been represented to Government by the Co-ordinators of the Extension Service Centres and Extension Service Units attached to the non-Government Colleges of

Education in the State that their duties are comparable with those of other Lecturers in the Colleges of Education and hence they may also be held eligible for the new U.G.C. recommended revised scale for a Lecturer, viz Rs.700-1600. Their college Managements have also pointed out that while making appointments to the posts of Co-ordinators in charge of extension Service Centers/Units when these came into existence sometime min 1969 or thereafter they had appointed lecturers available with them that is, persons who were borne on the cadre of lecturers. In other words, the appointees to the posts of Co-ordinators in the non-Government Colleges of Education were originally Lecturers in their respective colleges and they would have normally been eligible for the new UGC recommended revised scale of pay (Rs.700-1600) had they not been

appointed as Co-ordinators in charge of the Extension Service Centers or Extension Service Units attached to these colleges.

(i).....

(a) The incumbent must have been originally drawn from the cadre of Lecturers in the non-Government colleges of Education concerned, must be possessing qualifications prescribed by the University concerned for the post of Lecturer in a College of Education and must be in continuous service either as a Lecturer/and/or Co-ordinator with effect from 1.1.73.

(b) As and when posts of Lecturers in non-Govt. Colleges of Education concerned, wherein such Co-ordinators drawn originally from the cadre of Lecturers are working, become vacant hereafter for any reason such as resignation, death, retirement etc., the existing Co-ordinators drawn originally

from the cadre of Lecturers should be transferred to such vacant posts of Lecturers and the resultant vacancies in the posts of Co-ordinators should be filled in by appointing fresh recruits in the revised scale of Rs.600-1150 recommended by the Bhole Pay Commission for the posts of Co-ordinators by treating the said posts as of Co-ordinators by treating the said posts as "Administrative" instead of "teaching" posts.

(ii) It is clarified that the various conditions precedent to the teachers become eligible for revised UGC scales as mentioned in para 1 above and as are not inconsistent (such as manner of pay fixation, qualification, vacation, superannuation, code of conduct etc.) shall be applicable, mutatis mutandis in case of Co-ordinators in charge of Extension Service Centers/Units attached to the Non-Government Colleges of

Education in the State eligible for the scale of Rs.700-1600 as personal scale to them. Other service conditions (including mode of recruitment, assessment of work) of these co-ordinators will be as laid down by Government/Director of Education Maharashtra State, Pune, Director, State Institute of Education, Pune, from time to time.

11. The scheme spelt out from the Government Resolution clearly goes to show that the benefits of absorption in the cadre of Lecturers in non-government College of Education is only applicable to those candidates who have been originally drawn from the cadre of Lecturers and having and possessing qualification prescribed by the University concerned for the post of Lecturer in a College of Education and must be in continuous service either of the Lecturer/Co-ordinator w.e.f. 1-1-1973. It is only such

persons, who can be absorbed and considered for the post of Lecturer as and when such posts become vacant hereafter for any reason such as resignation, death, retirement etc. It further clarifies in clause (iv) which reads as under-

> (iv) The fresh persons appointed as Co-ordinators only in non-Government Colleges of Educations will not qualify for the new UGC recommended revised scale of Rs.700-1600 and will continue in their old scale of Rs. 300-600 till 31st March, 1976. From 1st April 1976, they will be entitled to opt for the revised (Bhole Commission) Scale of Rs. 600-1150. Their pay in the said revised scale of Rs.600-1150 shall be fixed in accordance with the pay fixation formula and other general instructions issued by Government in the matter of implementation of revised (Bhole Commission) scales."

12. There is no controversy over the fact that the initial appointment of the petitioner in Janta College of Education, Chandrapur is by letter dated 12-07-1982 which was for the post of Co-ordinator in the Extension services Centre, Janata College of Education, Chandrapur. It was in response to his application for the post of Co-ordinator. Though prior to joining Janata College of Education, Chandrapur as Co-ordinator, the petitioner may be teaching in school and College of Education but that cannot be construed that the initial appointment of the petitioner was that of a Lecturer and it was transferred as Co-ordinator in order to attract the Government Resolution dated 26-3-1979 and for that reason the petitioner's case is squarely covered by clause (iv) as quoted above from the said Government Resolution. We, therefore, find that the petitioner is not entitled either for absorption as a teacher and claim any benefits arising therefrom including pensionery benefits and extension of age of superannuation.

13. An attempt was made on the part of the petitioner by placing on record an additional affidavit dated 27-2-2006 to which petitioner has annexed documents to show that he did work as a Lecturer. We find that this does not in any manner assist the petitioner in substantiating his claim made in the petition, as the said appointment of petitioner cannot be taken into consideration for want of any such provision in the Government Resolution.

14. We, therefore, do not find any merits in the petition and the same will have to be dismissed.

15. The services of the petitioner were protected by this court by an interim order which enabled him to continue in service even after attaining age of 58 years and till he completed the age of 60 years and, therefore, in the peculiar facts and circumstances though this court in a subsequent order passed on 30th

September, 1996 called upon the petitioner to furnish security for an amount of rupees two lakhs against salary being paid to him due to the interim order passed by this court, in our view it will be just and proper to allow the petitioner to avail of the salary for the said period as he has already rendered the services for two additional years due to the interim order of this court and we discharge the petitioner of the security furnished by him pursuant to the orders passed by this court on 30th September, 1996.

The petition, therefore, stands disposed of accordingly.

Rule discharged.

JUDGE. JUDGE.

pzc